as constructive trustee. *Peyton* v. *Smith*, 22 N. C. 325; *Hale* v. *Aaron*, 77 N. C. 371. They cannot, against the right of the vendor to avoid. *Barton* v. *Hassard*, 3 Dr. & War. 461. But, irrespective of actual fraud, the danger in a conflict of interest requires that all profits from discounting the claims of creditors should accrue to the estate. *Woods* v. *Irwin*, 163 Pa. St. 413, 30 Atl. 232; *Cox* v. *John*, 32 Oh. St. 532. The executor is equally acting within his duties and under the advantage of his official knowledge when buying at a discount the claims of legatees. *Lovett* v. *Morey*, 66 N. H. 273, 20 Atl. 283. There seems to be no reason for a different rule. *Contra*, *Peyton* v. *Smith*, *supra*; *Hale* v. *Aaron*, *supra*. Finding that the transaction was not a gift but a payment on account of the advancement, the court in the principal case probably reached the correct result.

INSURANCE — FIDELITY INSURANCE — VARIATION OF RISK. — A bond executed by the defendant to secure the plaintiff bank against loss incurred through employing X. as assistant cashier contained a provision "that the employé can perform other duties than those properly belonging to the position mentioned . . . without notice . . . to the company." After the bond was executed, X. acquired a majority of the stock of the bank, and became a director and cashier. He then defaulted. *Held*, that the defendant is discharged from liability on the bond. *Farmers' & Merchants' State Bank* v. *United States Fidelity & Guaranty Co.*, 133 N. W. 247 (S. D.).

The equitable defense based on variation of risk by reason of a material change in the employee's duties is waived in this case by the clause in the bond. *Fidelity and Casualty Co.* v. *Gate City National Bank*, 97 Ga. 634, 25 S. E. 392; *Champion Ice, etc. Co.* v. *American Bonding & Trust Co.*, 115 Ky. 863, 75 S. W. 197. *Contra*, *National Mechanics' Banking Association* v. *Conkling*, 90 N. Y. 116. The contract of insurance is a personal one. See FROST, GUARANTY INSURANCE, 2 ed., § 113 (E). A change in the personality of the insured, a change in partnership, or from a partnership to a corporation, would give a defense. *Dance* v. *Girdler*, 1 B. & P. N. 34; *Dry* v. *Davy*, 10 A. & E. 30. But though the membership of a corporation is always changing, the corporation remains the same. *Cf. London, etc. Ry. Co.* v. *Goodwin*, 3 Exch. 320. The majority of the court rest their decision on the ground that the subsequent acquisition of a majority of the stock by the employee brought about a situation not contemplated by the parties, in which it would be unconscionable to continue to hold the surety to his legal obligation without giving notice. No cases have been found to support the decision. Where the risk is increased through no act of the obligee, the cases go no further than to give a defense when the employee is retained in service after knowledge of his dishonesty. *Phillips* v. *Foxall*, L. R. 7 Q. B. 666; *Watertown Fire Ins. Co.* v. *Simmons*, 131 Mass. 85. It is submitted that the facts of the principal case do not warrant a further imposition of affirmative duties on the insured.

INTERSTATE COMMERCE — INTERSTATE COMMERCE COMMISSION — POWER TO DENY REPARATION ON GROUND OF LACHES. — A shipper sought reparation through the Interstate Commerce Commission for excessive freight charges. The commission found that the rate charged was unreasonable, but denied relief for all charges previous to the filing of the complaint on the ground of laches. *Held*, that it cannot deny relief on such a ground. *Russe* v. *Interstate Commerce Commission*, U. S. Commerce Ct., Feb. 13, 1912.

The Interstate Commerce Commission derives all its powers from the Interstate Commerce Act of 1887 and its supplements, and can exercise no powers which are not given it thereby. See BEALE & WYMAN, RAILROAD RATE REGULATION, § 1034. In considering a complaint its sole consideration must be whether or not the situation which the carriers have created violates that act.